



Putting the *guarantee* into the Superannuation Guarantee

Submission by the Australian Council of Trade Unions to the
Treasury Consultation on the consultation paper *Securing
Australians' Superannuation Budget 2023-24*

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Contents

Introduction	1
Payday Super.....	2
Addressing an urgent need	2
Visibility driving compliance and reducing administrative burden	2
A level playing field for all	3
Growing workers' retirement savings	3
Benefiting workers most in need	3
Benefiting the economy.....	4
Payday super in practice	4
Compliance with payday super	5
Informed choice of fund, stapling and onboarding.....	6
Conclusion.....	7

Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia. There is no other national confederation representing unions. Together with its 42 affiliate unions, the ACTU represents 1.7-1.8 million trade union members across Australia who work across a broad spectrum of industries and occupations in both the public and private sectors.

The Australian trade union movement led the campaign to establish superannuation to provide workers with dignity in retirement. Through industrial action, bargaining and advocacy at both the Australian Conciliation and Arbitration Commission and the High Court, the union movement won the introduction of superannuation for many workers. The ACTU and affiliated unions were instrumental to the creation of the Accord which introduced universal and compulsory superannuation through the legislation of the Superannuation Guarantee (SG) by the Keating Labor Government.

All workers should receive superannuation on every dollar earned. This was the intent of the introduction of universal and compulsory superannuation 30 years ago. Unfortunately, this is not the reality today. A significant number of workers do not receive any superannuation, the majority of workers do not receive superannuation on every dollar earned, and a large number of Australian workers have their super, and the interest it generates, stolen. Not paying superannuation or paying it so late returns are lost for workers, is superannuation theft and a form of wage theft. Industry Super Australia's research demonstrates that \$33 billion worth of super was stolen from Australian workers between the financial years 2013-14 and 2019-20 and that 2.5 million workers had \$4.3 billion worth of super stolen from them in the financial year 2019-20 alone.

Superannuation is a fundamental industrial right of workers in Australia. The right to superannuation is enshrined in all Fair Work Commission Modern Awards, Fair Work Commission ratified Enterprise Agreements and will soon be in the National Employment Standards (NES) in the *Fair Work Act 2009* due to the passage of the Government's *Protecting Worker Entitlements Act*. Action must be taken by the Government to ensure that workers receive the superannuation that they are legally entitled to and that superannuation theft does not continue to rob workers of a fundamental right and a dignified life in retirement.

The ACTU welcomes the Government's proposal within the *Securing Australians' Superannuation Budget 2023-24* consultation paper to mandate payday super to reduce superannuation theft. Payday super will be an important step to ensuring that workers receive the superannuation they are entitled to. The aim of the Superannuation Guarantee was to *guarantee* superannuation for all

workers. Without the necessary reforms, including payday super, superannuation is far from guaranteed.

The *Securing Australians' Superannuation* package presents additional opportunities to improve the superannuation system for workers through introducing measures to ensure workers can make an informed choice when choosing a superannuation fund at the time of onboarding and to ensure that workers have access to industry appropriate insurance through their superannuation fund.

Payday super, default fund allocation, informed choice and industry appropriate insurance will deliver significant progress towards realising the objective of Australia's Superannuation Guarantee in assisting workers to live, work and retire in dignity.

Payday Super

Addressing an urgent need

Government action is required to address the significant superannuation theft that is occurring. Between 2013-14 to 2019-20, \$33billion of superannuation was stolen from Australian workers. The requirement to pay superannuation at the same time as wages is an effective policy response to superannuation non-compliance and will deliver many far-reaching benefits to workers, businesses, Government and the economy.

Visibility driving compliance and reducing administrative burden

Mandating regular payment of superannuation will provide greater visibility over superannuation compliance for Government, superannuation funds, workers and their unions. Increased visibility incentivises compliance and makes it easier to identify, and rectify, non-compliances and to discourage further non-compliance. This, therefore, reduces the size of the administrative burden currently carried by Government, superannuation funds, workers and their unions, in assessing superannuation compliance and obtaining unpaid superannuation and related interest.

Aligning superannuation payments with wage payments similarly reduces the administrative burden on employers currently maintaining different wage and super payment schedules. For this reason, many employers report that they have introduced payday superannuation models into their businesses. Smaller, more regular, superannuation payments will assist employers to remain up to date with their obligations instead of falling behind over long periods of time where the action then required to rectify the non-compliance is far greater. Furthermore, the requirement to pay superannuation at the same time as wages communicates to all employers that superannuation

is a central industrial right and legal obligation and not an optional additional payment with less importance and oversight than wages.

A level playing field for all

Greater superannuation compliance, as can be achieved through payday super, creates a level playing field between all employers as those who are meeting their legal obligations and operating ethically, are not put at a disadvantage to those skirting their legal obligations. No employer should be rewarded and given a competitive advantage through committing wage and superannuation theft and therefore, all employers must be held to the same legal standards. Payday super helps to ensure that all employers are equally compliant with their superannuation obligations.

Growing workers' retirement savings

Payday super will deliver more regular superannuation payments into workers' superannuation funds. As the bulk of retirement income through superannuation is generated from investment returns, payday super will significantly increase the returns workers are able to earn on their savings and therefore, significantly increase their quality of life in retirement. When superannuation is paid irregularly, this money is kept in employers' accounts and therefore, workers are unable to have their retirement savings invested appropriately. Superannuation is workers' money, as are the returns it produces, and must go to workers.

Benefiting workers most in need

Payday super will benefit all Australian workers as it will help to ensure compliance with a fundamental industrial right. In particular, payday super will significantly benefit women workers, younger workers, casual workers, lower paid workers, migrant workers and those working in insecure or precarious employment. These workers often receive lower wages, and therefore, lower superannuation contributions, meaning that every dollar in their superannuation accounts is critical to ensuring that they can live and retire in dignity. These workers also stand to gain the most from more regular superannuation payments delivering more regular compound interest returns. Furthermore, these workers are more likely to work in industries where there is less regulatory oversight and therefore, non-compliance is often more prevalent.

Many women take a greater amount of time out of the workforce for parental responsibilities than their male colleagues. Until the Superannuation Guarantee is introduced onto parental leave, every year hundreds of thousands of Australian women become significantly worse off for the rest of their lives. The Superannuation Guarantee must be introduced onto parental leave. Australian women retire with less than half the amount of superannuation than men and many Australian

women live in poverty in retirement as they do not have enough superannuation to sustain even a basic standard of living. Therefore, payday super is an extremely important step towards ensuring that women receive the superannuation they earn and can retire in dignity.

Benefiting the economy

Ensuring workers receive the superannuation they have earned has great economic benefit. Through superannuation compliance, workers have more money to sustain themselves in retirement, less resources are wasted on rectifying pervasive superannuation non-compliance, workers can remain appropriately insured through their superannuation funds and workers' savings can be responsibly invested to deliver high returns while driving economic development and growth to improve their working and retirement lives.

Payday super in practice

The ACTU supports the proposition of the employer payment model of payday super. Alternative proposals are contrary to the intent of the legislation to align super payments with wage payments. By definition, to align super payments with wage payments, super payments must be required to be paid when wages are paid.

The frequency of superannuation payments must align with the legally mandated wage payment frequencies in Modern Awards and Enterprise Agreements. The right to superannuation payment at the same time as the required wage payment should also be reflected in the NES entitlement.

Payday super should be integrated with Single Touch Payroll (STP) requirements and welcomes Treasury's comments in the *Securing Australian's Superannuation* Consultation paper as such:

"From 2023, the ATO will invest in creating a new unified database which matches Single Touch Payroll (STP) data from employers and Member Account Transaction Service (MATS) data from superannuation funds at scale. This database will provide a single source showing the near-real time recorded SG position for employers and employees, enabling the ATO to identify instances and patterns of late or underpayment of SG. This proactive SG compliance system will enable the ATO to identify instances of unpaid SG in near real time, allowing them to work with employers in a timely manner to respond to payment errors, and recover amounts and apply additional penalties in more serious cases of non-compliance."

Such action will ensure that payday super is practical and delivers on its aims of increasing visibility of superannuation payments, encouraging greater compliance and simplifying rectification of non-compliance.

To realise the intent of the Superannuation Guarantee in ensuring dignity in retirement for workers, in acknowledgement of the changing nature of work with many workers now relying upon regular overtime, allowances and loadings and to deliver the greatest ease of administration, payday super should be paid on all income earned by workers in the pay cycle and not only on Ordinary Time Earnings (OTE).

Furthermore, payday super requirements must include wages that workers have elected to salary sacrifice towards their superannuation. Salary sacrificed wages are workers' money and the timeframe in which they are transferred to a worker's superannuation account cannot be at the discretion of the employer. Once an employee has parted with this component of their wages it must be transferred to their superannuation account and cannot be left to accrue interest in an employer's bank account. Therefore, payday super offers an important opportunity to ensure workers' superannuation accounts grow through employer contributions as well as workers' own contributions through providing heightened governance of voluntary contributions.

Compliance with payday super

Robust mechanisms must be in place to incentivise compliance with payday super and ensure that non-compliances can be easily and quickly identified and rectified.

The ACTU does not support weakening the Superannuation Guarantee Charge (SGC) and believes that it must remain applicable to all earnings. At present, the SGC has not sufficiently deterred superannuation theft and therefore, weakening of the SGC will only worsen compliance outcomes.

To further ensure employers are incentivised to comply with payday super, Late Offset Payments before reconciliation to lower the SGC and late payments carried forward to future payment cycles, should not be permissible as they discourage compliance, will reduce future compliance with payday super and are to the detriment of workers.

The ACTU notes Treasury's comments in the consultation paper that: "Improvements in the ATO's ability to recover unpaid SG will require the ATO to reassess debt recovery processes and policies to ensure that employees receive their SG contributions". In addition to the SG recovery processes of the ATO, the ACTU notes that the insertion of superannuation into the NES, and the potential to insert payday superannuation requirements into the NES, assists other actors, such as unions, in

their work representing workers in recovering unpaid superannuation. The insertion of superannuation into the Federal Entitlements Guarantee (FEG) would further assist workers through their unions to obtain their unpaid superannuation.

Informed choice of fund, stapling and onboarding

Superannuation is an industrial right, soon to be listed as such in the NES, and must be preserved as such to ensure it is afforded to workers throughout their employment. A component of this right is workers' right to have their superannuation in an industry appropriate, not-for-profit fund, with industry appropriate insurance. To uphold these rights, Modern Awards and Enterprise Agreements outline the default superannuation fund/s for a worker who does not choose an alternative fund and who does not have a stapled fund.

To ensure that workers can make an informed choice of fund during onboarding, the ACTU proposes that employers be required to inform workers of the default fund/s in their Modern Award or Enterprise Agreement. This should be clearly communicated in writing to all workers during onboarding by both the employer and any digital onboarding platform through a private provider or the ATO. An ABN is not sufficient to determine default fund status and therefore, the default fund/s listed in the workers' Modern Award or Enterprise Agreement must be communicated.

Workers must always have access to information on their industrial rights, and processes for rectifying non-compliance with these rights, including through trade unions. Such rights include workers' rights to be paid the Superannuation Guarantee, at specified frequencies, and to have this paid into their choice of fund including their Modern Award or Enterprise Agreement default superannuation fund. Changes to onboarding processes cannot remove these rights.

A fundamental component of superannuation, when first envisaged and introduced, was the provision of industry appropriate death and temporary and permanent disablement (TPD) insurance. As a result, different industry funds provide different types of insurance coverage to align with the risk profiles of their members' occupations. Stapling workers entering high-risk industries to their previous funds means that these workers will not have appropriate insurance coverage for their work and its level of risk. This currently leaves many workers un-insured or underinsured with their superannuation balance eroded towards insurance which will not meet their needs. Therefore, the ACTU continues to advocate for an exemption on stapling for workers in high-risk industries to ensure that they can access industry appropriate insurance coverage and therefore, that their balances are not inappropriately eroded to pay for insurance they cannot gain benefit from.

Conclusion

The ACTU welcomes Treasury's proposal within the *Securing Australians' Superannuation Budget 2023-24* consultation paper to mandate payday super to reduce the significant levels of superannuation theft across Australia. Payday super is a crucial step towards ensuring workers receive the superannuation they are legally entitled to as a fundamental industrial right.

The *Securing Australians' Superannuation* package presents additional opportunities to improve the superannuation system for workers through introducing measures to ensure workers can make an informed choice when choosing a superannuation fund at the time of onboarding and ensuring that workers have industry appropriate insurance through their superannuation.

Payday super, informed choice and industry appropriate insurance will deliver significant progress towards realising the objective of Australia's Superannuation Guarantee in *guaranteeing* superannuation for all workers to allow them to live, work and retire in dignity.

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